

**UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER**

UNITED STATES OF AMERICA,	)	
Complainant,	)	8 U.S.C. § 1324c Proceeding
	)	
v.	)	
	)	OCAHO Case No. 96C00027
PEDRO DOMINGUEZ,	)	
Respondent.	)	Judge Robert L. Barton, Jr.
	)	

**AMENDED ORDER GOVERNING PREHEARING PROCEDURES**  
*(November 3, 1997)*

On August 12, 1996, I entered an Order Governing Prehearing Procedures (OGPP) in this case which included, among other things, a procedural schedule for the submission of witness and exhibit lists, completion of discovery, filing of dispositive motions, and the submission of a joint proposed pretrial order.<sup>1</sup> Since the entry of that order, there have been further developments which have narrowed the issues in this case, including my October 17, 1997, Order Partially Granting Complainant's Motion for Summary Decision (October 17 Order). Consequently, pursuant to the October 17 Order, the parties have filed a new procedural schedule, including dates for submission of amended witness and exhibit lists.

On October 29, 1997, I denied Complainant's motion for certification of the October 17 Order. Although I am aware that Complainant now has requested that the Chief Administrative Hearing Officer take review of and modify the October 17, 1997 Order, the OCAHO Rules of Practice provide, in pertinent part, that interlocutory review of an Administrative Law Judge's order, with or without certification by the Judge, **will not stay the proceeding unless the Judge determines that the circumstances require a postponement.** (emphasis added) 28 C.F.R. § 68.53(d)(2). Here, the CAHO has not yet indicated that he will take review, and, even if he does, there is no reason to stay this case since the issues on which Complainant seeks review should not centrally affect trial presentation (as Respondent aptly pointed out in its opposition to certification, the issues are redundant). Therefore, this case is not stayed.

Complainant is ordered to file, not later than November 12, 1997, a Statement of Disputed Issues (Statement) which will list the remaining disputed, unadjudicated issues on which it intends to offer evidence. The issues in the Statement shall be identified by roman numerals and any

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<sup>1</sup> The August 12, 1997 OGPP remains in effect, except as modified by this Order.

subissues shall be identified by capital letters. Complainant shall specifically indicate whether the issue relates to liability or penalty. In the Statement, Complainant also shall state, among other things, whether it intends to offer evidence to show that the 103 documents referenced in count I of the complaint were falsely made or altered, as those terms are defined by the October 17, 1997 Order. It also shall state whether or not it intends to offer evidence to show that the six documents referenced in paragraphs 24, 52, 60, 75, 88, and 89 of count I of the complaint were counterfeit or forged. With respect to count II, Complainant shall state whether it intends to offer evidence to prove that Respondent “used,” “attempted to use,” or “possessed” the I-94 documents referenced in count II of the complaint. Further, with respect to paragraphs 1-2, 4-7, 9-11, 14-17, 20-24, 27-28, 38-42, 50-52, 60-63, 68-69, 73-75, 78-79, 81-82, 84-86, 88-89, 91-92, 96-97, and 101-102 of count II of the complaint, Complainant shall state whether it intends to offer evidence to prove that these documents were “provided” as that term has been defined in the October 17, 1997 Order.

Complainant also is ordered to file, not later than November 12, 1997, an amended witness list. The witness list shall state the name, address (including city and state), title (if applicable) and business telephone number of each witness; shall describe **in detail** the subject matter of the testimony; shall list the specific issues on which the witness will testify (cross referencing the issues from the Statement of Disputed Issues); shall state the exhibits, if any, which shall be offered through each witness; and shall state for each witness the amount of time needed for the direct examination of the witness.

Finally, Complainant is ordered to file, not later than November 12, 1997, an amended exhibit list which shall list the exhibits by their exhibit number; shall state the title and date (if any) of the exhibit; shall describe the subject matter and relevancy of the exhibit; and shall cross reference the issues from the Statement of Disputed Issues to which the exhibit is relevant. To the extent that Complainant intends to offer evidence to show that the six documents referenced in paragraphs 24, 52, 60, 75, 88 and 89 were counterfeit or forged, Complainant shall specifically identify the exhibits which support that allegation and shall reference the relevant complaint paragraphs as to each. Similarly, to the extent that Complainant intends to offer evidence to prove that Respondent “used,” “attempted to use,” or “possessed” the I-94 documents referenced in count II, it shall specifically identify the exhibits which support those allegations, clearly identifying the relevant complaint paragraph as to each. Finally, to the extent that Complainant intends to offer proof that certain documents referenced in count II were “provided,” Complainant shall specifically identify the exhibits which support that allegation, clearly identifying the relevant complaint paragraph as to each. The exhibit list also will specify the number of pages in the exhibit (e.g. CX-A-1 through CX-A-4). Each exhibit shall be marked separately with a capital letter and numbered sequentially within each exhibit; the prefix CX shall precede the capital letter in Complainant's exhibits and the prefix RX shall precede Respondent's exhibits (e.g. CX-A, CX-B, CX-C; RX-A, RX-B, RX-C, etc.). Exhibits consisting of more than one page shall be numbered sequentially within each exhibit (e.g. CX-A-1, CX-A-2, etc.).

Complainant shall hand serve or otherwise guarantee that its Statement of Disputed Issues, Amended Witness List, and Amended Exhibit List are received by Respondent's counsel not later

than 5 p.m. Central Time on November 12, 1997. If Respondent does not agree with the Statement of Disputed Issues filed by Complainant, he shall serve its own Statement not later than December 1, 1997. Moreover, to the extent that Respondent intends to call witnesses or exhibits other than those listed by Complainant, and which are not presently listed in its current witness or exhibit lists, he shall serve his own amended witness and/or exhibit list by December 1, 1997.

Absent a showing of compelling need, there will be no further discovery requests or depositions in this proceeding. The parties were given sufficient time to conduct discovery. Moreover, during the July 30, 1997, Prehearing Conference, Complainant was given until August 20, 1997, to submit a request for additional discovery, (see PHC(2) Tr. 23, 31; PHCR 3) and failed to do so. I therefore ruled on September 9, 1997, that Complainant was barred from propounding any further discovery unless it is first approved in advance by the Judge. See Order Striking in Part Complainant's Supplemental Memorandum, at 5. Respondent had not indicated during the prehearing conference that he would need additional discovery. However, if Respondent needs additional discovery, he shall file its specific requests, including a copy of the proposed interrogatories, requests for admission, or requests for production, with the Court not later than December 1, 1997.

If there are to be any further dispositive motions, they shall be filed not later than November 24, 1997, and any response to the same shall be filed not later than December 1, 1997. The final prehearing conference will be held on Monday, December 8, 1997, at 1 p.m Central Time (2 p.m Eastern Time), and the Joint Prehearing Statement, which shall contain the matters referenced in 28 C.F.R. § 68.12, will be filed by the parties on December 8, 1997. I expect that the hearing will begin in January, 1998, in San Antonio, Texas. The specific hearing dates will be set during the December prehearing conference after I receive the amended witness and exhibit lists.

The Statements of Disputed Issues, Amended Witness Lists, and Amended Exhibit Lists filed by the parties shall serve as the blueprint for the hearing and will be incorporated in the Joint Prehearing Statement filed by the parties and in the Final Prehearing Order which will be issued after the December prehearing conference. See 28 C.F.R. § 68.12; Rule 16, Fed. R. Civ. Proc. Once incorporated in the Final Prehearing Order, they "shall be modified only to prevent manifest injustice." See Rule 16(e), Fed. R. Civ. Proc. If a party's witness or exhibit list fails to comply with this ORDER, upon motion by the opposing party, I may strike the nonconforming parts of the list. Further, if a party attempts at the hearing to question a witness on an issue which has not been listed in the Statement or has not been listed in the witness list for that witness, either upon objection by the opposing party or sua sponte, I may prohibit the witness from testifying as to that issue.

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**ROBERT L. BARTON, JR.**  
**ADMINISTRATIVE LAW JUDGE**

## CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of November, 1997, I have served the foregoing Amended Order Governing Prehearing Procedures on the following persons, by first class mail (unless otherwise indicated), at the addresses shown:

Jane H. Thomson  
Assistant District Counsel  
Immigration and Naturalization Service  
P.O. Box 34178  
San Antonio, TX 78265-4178  
(Counsel for Complainant)  
(by fax and first class mail)

Michael A. Chovanec, P.C.  
Attorney at Law  
Greatview Office Center  
8207 Callaghan Road, Suite 425  
San Antonio, TX 78230  
(Counsel for Respondent)  
(by fax and first class mail)

Dea Carpenter  
Associate General Counsel  
Immigration and Naturalization Service  
425 "I" Street, N.W., Room 6100  
Washington, D.C. 20536

Office of the Chief Administrative Hearing Officer  
Skyline Tower Building  
5107 Leesburg Pike, Suite 2519  
Falls Church, Virginia 22041  
(Hand delivered)

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Linda S. Hudecz  
Legal Technician to Robert L. Barton, Jr.  
Administrative Law Judge  
Office of the Chief Administrative Hearing Officer  
5107 Leesburg Pike, Suite 1905  
Falls Church, VA 22041  
Telephone No.: (703) 305-1739  
FAX No.: (703) 305-1515